LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 7 1963
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 162

FAR EAST CONFERENCE, AMERICAN PRESIDENT LINES, LTD., ISTHMIAN LINES, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, FEDERAL MARITIME COMMISSION, H. KEMPNER, GALVESTON COTTON COMPANY AND TEXAS COTTON INDUSTRIES, INC., RESPONDENTS

No. 163

GULF/MEDITERRANEAN PORTS CONFERENCE, ET AL., PETITIONERS

v.

FEDERAL MARITIME COMMISSION, UNITED STATES OF AMERICA, H. KEMPNER, GALVESTON COTTON COMPANY, TEXAS COTTON INDUSTRIES, AND THE MEMBERS OF THE FAR EAST CONFERENCE, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL MARITIME COMMISSION IN SUPPORT OF PETITIONS

JAMES L. PIMPER,
General Counsel,
ROBERT E. MITCHELL,
Deputy General Counsel,
JAMES E. MANUEL,
Attorney,
Federal Maritime Commission,
Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1138

FAR EAST CONFERENCE, AMERICAN PRESIDENT LINES, LTD., ISTHMIAN LINES, INC., ET AL.

v.

UNITED STATES OF AMERICA, FEDERAL MARITIME COMMISSION, H. KEMPNER, GALVESTON COTTON COMPANY AND TEXAS COTTON INDUSTRIES, INC.

No. 1002

GULF MEDITERRANEAN PORTS CONFERENCE, ET AL.

v.

FEDERAL MARITIME COMMISSION, UNITED STATES OF AMERICA, H. KEMPNER, GALVESTON COTTON COMPANY, TEXAS COTTON INDUSTRIES, AND THE MEMBERS OF THE FAR EAST CONFERENCE

MEMORANDUM FOR THE FEDERAL MARITIME COMMISSION IN SUPPORT OF PETITIONS

---

1. The Federal Maritime Commission supports the petitions for certiorari filed herein by the Gulf/Mediterranean and Far East Conferences on the ground that by the interim legislation (so-called Moratorium Act, Public Law 85-626, 72 Stat. 574,

and similar later enactments), Congress intended to insulate from the effects of the Isbrandtsen decision (356 U.S. 481) dual rate contracts in use on May 19, 1958. There is no doubt that Congress has the power in the circumstances present here to legislate retroactively, and it clearly exercised that power in its enactment of the interim legislation. Unless so construed, the primary purpose of the legislation, namely, to protect dual rate systems, would be frustrated. "Protection" without relief from liability for penalties and reparations is no protection at all. The Commission applied the plain language of the statute in the belief that Congress meant what it said, but the court below, by *per curiam* opinion with one judge dissenting (313 F. 2d 586), took the opposite position. No explanation was offered by the court and we cannot speculate as to what it relied upon for support. It is submitted that the dissent of Judge Danaher was eminently correct in concluding that "on this record the Board could have done nothing but what it did do."

2. The Commission regards as premature in these cases the question of reparations and their correct measure, which is raised by the Far East Conference (Pet. p. 4). If the court below is reversed for the reasons above-stated, the question of reparations will be academic. If the court below is not reversed, reparations will necessarily be the subject of further proceedings before the Commission, which is the proper forum to deal initially with contentions of the sort here urged by the Far East Conference (Pet. pp. 17-19).

3. The petitions for a writ of certiorari should be granted.

Respectfully submitted.

JAMES L. PIMPER,
General Counsel.
ROBERT E. MITCHELL,
Deputy General Counsel.
JAMES E. MAZURE,
Attorney,
Federal Maritime Commission.

JUNE 7, 1963.